

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

DYSTAR TEXTILFARBEN GMBH
& CO. DEUTSCHLAND KG,

Plaintiff,

vs.

C. H. PATRICK CO. INC., AND
BANN QUIMICA, LTDA,

Defendants.

Civil Action No. 6:02-2946-WMC

ORDER

This matter is before the court on the motion of defendants C.H. Patrick Co., Inc., and Bann Quimica, Ltda. to vacate the permanent injunction ordered against them on October 26, 2005. This action arises from a dispute concerning U.S. Patent No. 5,586,992 (the '992 patent), which is directed to a process for "dyeing cellulose-containing textile material with hydrogenated indigo." The plaintiff alleged that the defendants infringed the '992 patent, both directly and contributorily (am. comp. ¶¶ 10-13). The defendants denied infringing the '992 patent, contended that the '992 patent is invalid, and contended that the inventors of the '992 patent and the plaintiff's predecessor, BASF, committed inequitable conduct.

The case was referred to this court for disposition on April 19, 2005, pursuant to Title 28, United States Code, Section 636(c), Federal Rule of Civil Procedure 73, and Local Rule 73.01(B), DSC, by order of the Honorable Henry F. Floyd, United States District Judge, and upon consent of the parties.

A jury trial was conducted before this court September 7-16, 2005. After the jury entered judgment against the defendants for patent infringement of the '992 Patent, and the court denied the defendants' motion for judgment as a matter of law, the defendants

were permanently enjoined from using or inducing others to use, in the United States, products such as Indigo Bann 20 Reduced, Indigo Bann 30 Reduced, or Indigo Bann 40 Reduced, in the process of dyeing cellulose-containing textile materials according to the steps of claims 1-4 of the '992 patent.

The defendants appealed to the United States District Court for the Federal Circuit. On October 3, 2006, the Federal Circuit issued a decision holding claims 1-4 of the '992 Patent invalid for obviousness. See *Dystar Textilfarben GmbH v. C.H. Patrick Co.*, 464 F.3d 1356 (Fed. Cir. 2006). Following this decision, plaintiff DyStar Textilfarben GmbH & Co. Deutschland KG filed a petition for rehearing en banc, which was denied on December 4, 2006. The Federal Circuit's mandate issued on December 14, 2006.

The plaintiff file a petition for writ of certiorari to the United States Supreme Court on March 5, 2007, and on June 11, 2007, the Supreme Court denied the petition. Accordingly, the defendants request that the court lift the permanent injunction ordered against them on October 26, 2005. The plaintiff acknowledged in its opposition to the motion that "[i]f the Supreme Court denies certiorari, then the injunction can be lifted" (pl. opp. m. to vacate 3).

Now, therefore, based upon the foregoing,

IT IS ORDERED, that the defendants' motion to vacate the injunction is granted. Furthermore, with regard to the defendants' request for an award of its costs in litigating this action, as the Supreme Court has now denied the plaintiff's petition for writ of certiorari, the parties may supplement their briefs on the issue of costs by August 13, 2007, if they wish to do so.

IT IS SO ORDERED.

s/William M. Catoe
United States Magistrate Judge

July 26, 2007
Greenville, South Carolina